

PATENT
Application No. 10/812,837
Attorney Docket No.: 92030/03-701
Amendment

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REMARKS

Claims 1, 2, 4, 11-16, 18-21, 23, 24, 35, 36, 38-40 and 47-72 are pending in the application. Claims 14-16, 21, 53-57, 62-65 and 68-72 are allowed. Claims 18, 58, 60 and 66 are amended herein. Claims 3, 5-10, 17, 22, 25-34, 37, 41-46 were previously withdrawn from further consideration. Claims 1, 2, 4, 11-13, 18, 19, 23, 24, 35, 36, 38-40, 47-52, 58, 60, 66, and 67 are rejected. Claims 20, 21, 59, 61 and 63 are objected to. Claims 1-13, 19, 20, 22-52, 59 and 61 are canceled. Claims 14-16, 18, 21, 53-58, 60 and 62-72 remain for consideration.

By this amendment, Applicant is canceling rejected and withdrawn claims without prejudice and is taking allowed claims and putting objected to claims in condition for allowance. Applicant expressly reserves the right to re-introduce canceled claims in a later application to submit arguments for patentability. Applicant's decision to cancel claims in this action should not be interpreted as an admission that the claims are not patentable.

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Claim Rejections – 35 USC §102

35 USC §102; McDonnell

The Examiner rejects claims 1, 4, 11-13, 18, 23, 24, 35, 58 and 60 as being anticipated by McDonnell (U.S. Patent No. 6,126,688). The Examiner states that:

McDonnell discloses an interbody spine fusion (10) comprising a body (18) defining an outside surface, a carrier receiving area (14), an un-doped carrier material (12), a port (16) and a pathway (see side opening in Fig. 1).

Regarding claim 1, see col. 4, lines 43-49 disclosing a biological active substance. The biological active substance binds with the doped carrier material because the bone growth factors of the McDonnell reference are packed within the internal cavity of the implant.

Regarding claim 11, the ports 16 make the body a body-to-body appliance.

Regarding claim 12, the elements 20 make the body a bone-to-device appliance.

Regarding the biologically active substances (see col. 4, lines 43-49).

Regarding claims 15 and 16 (see col. 4, lines 43-49).

Claims 1, 4, 11-13, 23, 24 and 35 are canceled.

Claim 18 is amended to incorporate the limitations of amended dependent claim 20, which the examiner has indicated to be allowable. Claim 18 is submitted to be patentable for at least this reason.

PATENT
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Amendment

Claim 58 is amended to incorporate the limitations of amended dependent claim 59, which the examiner has indicated to be allowable. Claim 58 is submitted to be patentable for at least this reason.

Claim 60 is amended to incorporate the limitations of amended dependent claim 61, which the examiner has indicated to be allowable. Claim 60 is submitted to be patentable for at least this reason.

35 USC §102; Weber et al.

The Examiner rejects claims 1, 2, 18, 19, 35, 36, 38-40, 47-52, 58 and 60 as being anticipated by Weber et al. (U.S. Patent No. 6,482,234). The Examiner states that:

Weber et al discloses a spinal disc (20) comprising a body (24), a carrier receiving area (22), an un-doped carrier material (76), a port (aperture used to insert element 72), a pathway (slit used to insert syringe, see Fig. 7B) and a plug (72). Additionally, see col. 3, lines 44-45; col. 6, lines 47-49 and col. 7, lines 31-34.

Claims 1, 2, 19, 35, 36, 38-40 and 47-52 are canceled.

Claim 18 is amended to incorporate the limitations of amended dependent claim 20, which the examiner has indicated to be allowable. Claim 18 is submitted to be patentable for at least this reason.

PATENT
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Claim 58 is amended to incorporate the limitations of amended dependent claim 59, which the examiner has indicated to be allowable. Claim 58 is submitted to be patentable for at least this reason.

Claim 60 is amended to incorporate the limitations of amended dependent claim 61, which the examiner has indicated to be allowable. Claim 60 is submitted to be patentable for at least this reason.

Claim Rejections – 35 USC §112

The Examiner states:

Claims 66 and 67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 66 recited the limitation “said pre-loaded sponge material” in lines 5 & 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 66 is amended to change, “a pre-loaded carrier material...” to -- a pre-loaded sponge material... -- to correct the antecedent basis inadequacies in the claim.

Applicant submits that claims 66 and 67 are now in compliance with 35 U.S.C. §112.

Reconsideration and allowance of claims 66 and 67 is respectfully requested.

PATENT
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Allowable Subject Matter

The Examiner states:

Claims 14-16, 21, 53-57, 62-65, and 68-72 are allowed.

Claims 20, 59, 61, and 63 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 21, 66 and 67 are objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Dependent claim 20 is canceled. The limitations of dependent claim 20, which the Examiner has indicated to be allowable, have been added to amended base claim 18. Amended base claim 18 is submitted to be patentable.

Dependent claim 59 is canceled. The limitations of dependent claim 59, which the Examiner has indicated to be allowable, have been added to amended base claim 58. Amended base claim 58 is submitted to be patentable.

Dependent claim 61 is canceled. The limitations of dependent claim 61 have been added to amended base claim 60. Amended base claim 60 is submitted to be patentable.

With regards to claim 63, the Examiner has indicated claim 63 to be allowable. Further, since claim 63 depends from allowed base claim 62 Applicant believes that the Examiner listed claim 63 as "objected to" in error.

PATENT
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With regards to claim 21, the Examiner has indicated claim 21 to be allowable. Further, since claim 21 is in independent form, Applicant believes that the Examiner listed claim 21 as "objected to" in error.

With regards to claim 66, claim 66 is rejected under § 112 as being indefinite. Since claim 66 is written in independent form, Applicant believes that the Examiner has listed claim 66 as "objected to" in error.

With regards to claim 67, claim 67 is rejected under § 112 as being indefinite. Since claim 67 depends from independent claim 66, which is not subject to a substantive rejection, Applicant believes that the Examiner has listed claim 67 as "objected to" in error.

Withdrawn Claims

Withdrawn claims 3, 5-10, 17, 22, 25-34, 37 and 41-46 are canceled herein without prejudice.

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Considering the foregoing, it is sincerely believed that this case is in condition for allowance, which is respectfully requested.

This paper is intended to constitute a complete response to the outstanding Office Action. Please contact the undersigned if it appears that a portion of this response is missing or if there remain any additional matters to resolve. If the Examiner feels that processing of the application can be expedited in any respect by a personal conference, please consider this an invitation to contact the undersigned by phone.

Respectfully submitted,

Date:

November 22, 2006


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